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EXAMINER

LAYNO, CARL HERNANDZ

ART UNIT	PAPER NUMBER
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3762

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DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/016,507

Applicant(s)

SILVER ET AL.

Examiner

Carl H. Layno
2/29/04

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2001.
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 36-41 and 49-58 is/are allowed.
6) ☒ Claim(s) 1-3, 5, 7, 9-11, 14, 21-27, 29, 34, 35 and 42 is/are rejected.
7) ☒ Claim(s) 4, 6, 8, 12, 13, 15-20, 28, 30-33 and 43-48 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 10 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. Acknowledgment is made of applicant's Information Disclosure Statement (PTO-1449) which was received by the Office on May 29, 2002. This document has been made of record in the file as Paper No.5.

Drawings

2. Applicant's formal drawings were received by the Office on December 10, 2001 have been approved by both the Draftsperson and the Examiner.

Claim Objections

3. Claims 5 and 29 are objected to under 37 CFR 1.75(b) in that the claim does not "differ substantially" from previously recited claim 3. The Examiner believes the statements "retrieving the medical information" (claim 5) and "retrieving data from the defibrillator" (claim 29) are synonymous with the statements "getting the medical information" (claim 3) and "getting data from the defibrillator" (claim 27), respectively. To overcome this objection, the Examiner recommends canceling claim 5.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 34 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, there is no antecedent basis for the term “the software agent” in line 1 of claim 34, or in base claim 26, or in base claim 32. Claim 35 is also rejected since it depends from rejected base claim 34.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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7. Claims 1-3, 5, 7, and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Fernandez et al '615-A1 pre-grant publication.

The Fernandez et al '615-A1 United States Pre-Grant publication describes a system for communicating between a medical device (Fig.2) having input sensors **44** and a software agent (not numbered -- p.5, paragraphs [0055] and [0056]) in software **66** residing in processor/controller **6** (Fig.3).

In regard to claim 2, see memory storage **49** (Fig.2).

In regard to claims 3 and 5, applicant's attention is directed to p.5, paragraph [0056].

In regard to claim 7, one or more agents can be in contact with one another (p.5, paragraph [0054], line 6-8).

In regards to claims 9 and 10, processor/controller **6** is equipped with a communications device **69** (Fig.3) which may be a cellular telephone (p.6, paragraph [0061], lines 6-7).

In regards to claim 11, network **8** (Fig.1) is the Internet (p.5, paragraph [0054], line 6).

8. Claims 14, 21-27, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee '432-B2.

The Lee '432-B2 patent describes a system (Fig.1) for connecting implantable medical devices to remotely located monitoring/control devices comprising applicant's claimed features of a therapeutic device (IMD) **112**, an "interface medical unit" **116**, and a "device agent software module" (col.16, lines 63-64), which enables any particular version of IMD **112** to communicate with interface medical unit **116** (col.16, lines 63 thru col.17, line 18). The IMD **112** may be any

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one of a number of devices including a pacemaker, defibrillator, and neurological stimulator, among others (col.10, lines 46-50).

In regard to claims 21 and 22, since the software agent communicates to the IMD **112** over a network **114** having a plurality of “output devices” (Fig.1) including cell phones **140**, personal digital assistants **138**, and personal computers **146**.

In regard to claims 23 and 24, the network **114** appears to be a wired local area network (LAN) (col.10, line 55), however, the network link may also be wireless or infrared (col.10, line 56).

In regard to claim 25, the software agent resides on server **136**, part of what appears to be a central computer/data management system **120** connected to a data storage facility **134** where the central computer may access any number of addresses, phone numbers, etc. (col.12, lines 25-48).

In regard to claim 26, applicant’s claim reads on the scenario where IMD **112** may be a implantable defibrillator in communication with personal digital assistant (PDA) **138**.

In regard to claims 27 and 29, upon execution of the agent module, the software may cause interface **116** to retrieve configuration data from IMD **112** (col.17, lines 9-17) for a remote requesting device, like a PDA **138** (col.12, lines 49-53).

9. Claim 42 is rejected under 35 U.S.C. 102(e) as being anticipated by Muraca ‘917-A1.

The Muraca ‘917-A1 U.S Patent Application Publication describes a method and apparatus using a master control file for easing computer software interoperability in medical devices. This publication describes an embodiment reading upon applicant’s claimed terminal

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features. See Fig.8, which shows a client computer terminal **242** having a user interface comprising a keyboard and display (not numbered), a data storage device (the computer's hard drive – not shown), and an interface connection (not numbered) to the Internet **246**. The computer terminal includes a Master Control File **216**, which enables the terminal/computer to interface with various disparate software operating systems (Fig.7).

Allowable Subject Matter

10. Claims 34 and 35 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claims 4, 6, 8, 12, 13, 15-20,28, 30-33, and 43-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 36-41 and 49-58 are allowed.

13. The following is a statement of reasons for the indication of allowable subject matter:

Independent claim 36 describes a medical device comprising a “common interface” for exporting either configuration data or patient data which is organized into “one or more subdirectories of a directory”. Unable to find this feature in the prior art, the Examiner deems this claim and its depending claims to be allowable.

Independent claim 49 describes a method for communicating between a medical device and a terminal comprising, among other steps, the step of “exposing a directory of objects” on the medical device wherein each object references data relating to the medical device. Again, unable to find this step in combination with applicant’s other steps in the prior art, the Examiner deems this claim and its depending claims to be allowable.

Similar to claim 49, independent claim 54 describes a medical device comprising a processor for “exposing a directory of objects”. These “objects” have “well-known names” and are invoked by a user to change the configuration data of the device and, hence, its patient therapy. Unable to find this feature in the prior art, the Examiner also deems claim 49 and its depending claims to be allowable over the prior art.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Webb ‘654-A1 patent describes an implantable defibrillator in wireless communication with an external programmer (Fig.1) and, which, like applicant’s device, uses Extensible Mark-up Language (XML).

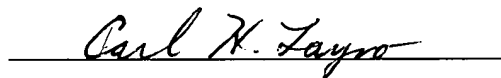
The Medema et al ‘602-A1 U.S Patent Application Publication is cited for its teaching of the use of a PDA 14 in communication with a defibrillator 12 (Fig.1). Unlike applicant’s device, it is unclear what software versions the PDA can communicate with.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All faxed correspondence should be sent to the Office's new official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.

A handwritten signature in cursive script, reading "Carl H. Layno", is written over a horizontal line.

CARL LAYNO
PRIMARY EXAMINER

CHL
2/29/04